Ram Construction Company, Inc. *and* **Bradley E. Foster.** Case 6-CA-13658

August 9, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On July 9, 1981, Administrative Law Judge James P. Timony issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in answer to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

The General Counsel has excepted, *inter alia*, to the Administrative Law Judge's failure to find that Respondent additionally violated Section 8(a)(1) of the Act by twice threatening employee Foster with discharge because he had filed grievances. We find merit in these exceptions for the reasons given below.

On May 13, 1980, Respondent's president, Lastooka, received employee Foster's written complaint about the order in which employees were being recalled from layoff and about not being paid for the days he had trained on the triaxle truck, both matters which Lastooka thought had been resolved with Foster several weeks before. Lastooka, who was admittedly upset, called Foster at home and arranged to meet with him later that day at the jobsite trailer. Immediately before entering the Company's trailer, Lastooka heard from Castagna, Respondent's vice president of construction, that Foster previously had filed a grievance on a different matter. Once inside the trailer, Lastooka told Foster that he would have fired Foster had he known about the earlier grievance. At another point during their loud and heated argument, Foster lunged at Lastooka as if to strike him, and Lastooka suggested that it might be better for everyone if Foster would seek other employment. Eventually, both men stopped shouting and talked calmly about the matters raised in Foster's complaint.

The Administrative Law Judge failed to make any finding regarding the lawfulness of Lastooka's remarks about Foster's earlier grievance. We find that Lastooka's remarks constituted an explicit threat to Foster that his filing of grievances would result in his discharge. Such a threat reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights and is violative of Section 8(a)(1).[4]

The Administrative Law Judge concluded, with regard to Lastooka's suggestion that Foster seek other employment, that Lastooka's words did not amount to an actual discharge. In so concluding, he relied, in part, on the fact that Lastooka's words were spoken in heat and shortly after Foster had lunged at him. He also relied on the fact that the parties eventually cooled down and parted amicably. The Administrative Law Judge found that in these circumstances no reasonable employee would have considered himself terminated as a result of Lastooka's words.[5] The Administrative Law Judge made no finding, however, as to whether Lastooka's words constituted an unlawful threat of discharge, as urged by the General Counsel.

It is clear from the record that Lastooka's suggestion that Foster seek employment elsewhere constituted an implied threat of discharge for engaging in protected activities, which reasonably tended to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *United Parcel Service*, 247 NLRB 861, 865-866 (1980). Moreover, the fact that Lastooka's words may have been spoken in anger does not nullify their coercive impact. See *Bell Burglar Alarms, Inc.*, 245 NLRB 990 (1979); *Oscar Enterprises, Inc., OMCO, Inc., Halvin Products Co.*, 214 NLRB 823 (1974).

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] It appears, based on his credibility resolutions, that the Administrative Law Judge found that Respondent's president, Lastooka, used strong language in telling Charging Party Foster not to talk to his sister about the argument in the Company's trailer on May 13, 1980. However, it is not clear whether the Administrative Law Judge found that Lastooka specifically stated "he would have Foster taken care of one way or the other." Even assuming, *arguendo*, that the Administrative Law Judge made such a finding, we conclude that the General Counsel has not established that Respondent threatened Foster with bodily harm. In so doing, however, we disavow the Administrative Law Judge's reliance on the subjective testimony of Foster's sister about the alleged threat.

[3] We shall include in our new notice language that more closely conforms to par. 1(a) of the Administrative Law Judge's recommended Order.

[4] See, e.g., *Servomation Corporation*, 248 NLRB 106 (1980).

[5] No party has filed exceptions to the Administrative Law Judge's finding that Lastooka's words, in themselves, did not amount to an actual discharge of Foster.

Accordingly, we conclude that Respondent, through Lastooka's statements, violated Section 8(a)(1) of the Act by threatening Foster with discharge because he had filed grievances.[6]

AMENDED CONCLUSIONS OF LAW

Insert the following new Conclusion of Law 4 and renumber the subsequent conclusion accordingly:

"4. Respondent violated Section 8(a)(1) of the Act by unlawfully threatening its employee Bradley E. Foster with discharge because he had filed grievances."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Ram Construction Company, Inc., Canonsburg, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as new paragraph 1(b) and reletter the subsequent paragraph accordingly:

"(b) Threatening its employees with discharge because they have filed grievances."

2. Substitute the attached notice for that of the Administrative Law Judge.

[6] The finding of these additional violations of Sec. 8(a)(1) are insufficient to affect our conclusion, in agreement with the Administrative Law Judge, that Respondent did not constructively discharge Foster on May 13, 1980.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten employees with more onerous and rigorous terms and conditions of employment because they have filed grievances.

WE WILL NOT threaten employees with discharge because they have filed grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

RAM CONSTRUCTION COMPANY

DECISION

STATEMENT OF THE CASE

JAMES P. TIMONY, Administrative Law Judge: This case was heard before me in Pittsburgh, Pennsylvania, on May 7, 1981, upon the complaint issued on September 26, 1980, based on a charge filed by Bradley E. Foster. The complaint alleges that Ram Construction Company, Inc. (herein called Respondent or Ram), engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by threatening employees with bodily harm and with more onerous and rigorous terms and conditions of employment because they had filed grievances, and by causing the termination on May 15, 1980, of employee Foster because of his union activities.

By its answer, Ram admits service of the charge, commerce facts and conclusion, the labor organization status of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Building Material and Construction Drivers, Local 341, and the supervisory status of President John M. Lastooka, Vice President of Construction Rich Castagna, and Vice President of Equipment Maintenance Michael Shuler. Ram denies the commission of the unfair labor practices alleged in the complaint.

Issues

1. Whether Ram violated Section 8(a)(1) of the Act by threatening employees with bodily harm because they filed grievances.

2. Whether Ram violated Section 8(a)(1) of the Act by threatening its employees with more onerous and rigorous terms and conditions of employment because they filed grievances.

3. Whether Ram violated Section 8(a)(1) and (3) of the Act by causing the termination of its employee, Bradley Foster, because of his union activities.

Upon consideration of the whole record, and my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Ram admits and I find that (1) it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that (2) the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE EVENTS

Ram is a general contractor engaged in heavy and highway construction in the Pittsburgh area. Lastooka started the Company 15 years ago and directs operations as its president. Castagna directs daily operations at the jobsites, including the extension of a taxiway at the Pittsburgh International Airport. Shuler is responsible for the maintenance of trucks and other equipment and dispatches drivers to the various jobsites.

Bradley Foster was discharged from the Navy in 1979 and went to work for a gas company in Illinois. After 2 months he returned to Pittsburgh because he was accepted by the University of Pittsburgh. He was employed by Respondent as a laborer in August 1979.

Foster obtained employment with Respondent through his sister, Rhonda Mlatnik, who was Lastooka's personal secretary and payroll supervisor. She asked Lastooka to hire her brother.

After Foster worked for a few days as a laborer, Lastooka realized that he was not capable of doing heavy manual work and that the foreman would shortly discharge him. Lastooka drove a new truck costing $265,000 to the jobsite and offered Foster a job as a truckdriver, at higher pay. Lastooka personally trained Foster to drive the truck and got him in the Union. In the history of the Company only experienced truckdrivers had been hired and no other laborer had become a truckdriver. Lastooka never before personally trained a truckdriver.

Lastooka put Foster on a construction crew that worked a lot of overtime. From August to December, Foster averaged 58 hours a week. In October 1980, Foster negligently destroyed the pump on the back of a fuel truck. His supervisor, Castagna, wanted to fire him but Lastooka intervened and kept Foster on the payroll for a few weeks until the winter layoff so that Foster could qualify for unemployment benefits.

In April 1980, after the winter layoff, Ram gradually started to recall employees. On April 21, employee Jim Green was recalled to drive a triaxle truck, a large dump truck. It is a complicated machine requiring a special license and requires a skillful driver, since it is dangerous to drive, especially when being driven loaded on the highway. Green was junior to Foster, having been hired after him. He was, however, licensed and qualified to drive a triaxle truck. Foster was not.

Foster's sister noticed that Green had been recalled. She confronted Michael Shuler, who was in charge of dispatching Ram's equipment, and demanded to know why Green was working when her brother had not yet been recalled. Shuler explained that the Company needed triaxle drivers and Green had been driving a triaxle before the layoff and was licensed to do so whereas Foster was not. Mlatnik then went to Lastooka, complaining that Shuler had recalled Green but not her brother. Foster also went to see Lastooka about this matter. Lastooka agreed to pay him for the 2 days on which the junior driver worked and Foster did not. Lastooka said he would pay him for 2 rain days, on which he did not work, so that Shuler would be unaware that Foster was being paid. Lastooka also decided to have Foster trained to drive the triaxle.

That night Shuler telephoned Foster telling him to ride with Green in a triaxle truck the next day. Foster rode with Green on April 24, watching him operate the truck. At the end of the day, when Foster attempted to turn in his timesheet, Shuler told him that he probably would not be paid for the training period.[1] Foster again rode with Green in the triaxle on April 28 learning how to operate the truck, and again Shuler told him he would not be paid while training. The following day, Foster was allowed to drive an unloaded triaxle to the airport jobsite, where he operated it alone on the jobsite all day. He did not operate the truck successfully, and at one point raised the body up in the air loaded with 25 tons of dirt and rock, which would not come out because he had forgotten to release the tailgate catch. Shuler felt that Foster was not qualified to drive the triaxle.[2]

After Foster's unsuccessful training period, Shuler continued to give work to Green but not to Foster. Every day that Green drove out the gate and Foster did not, Mlatnik would badger Shuler and Lastooka about it. She became sullen and irritable and unable to do her work properly. She was so emotionally upset that she had to go to the hospital with stomach ulcers.

Although Lastooka discussed the matter with Shuler several times, Shuler continued to oppose recalling Foster to drive the triaxle truck because he did not believe Foster could handle the truck safely. Lastooka was concerned about his secretary's health and did not want to upset her. He considered her a key employee and did not want to lose her in the dispute concerning her brother.

On May 13, Foster filed a written complaint, asking for 7 days' pay.[3] Castagna forwarded the complaint and Mlatnik took it into Lastooka's office. After reading the complaint, Lastooka called Foster and arranged to meet him at the trailer office of the airport jobsite. Lastooka was upset about the complaint. He felt that his office was in turmoil because of an unjustified complaint which he thought he had settled, and he thought Foster was ungrateful for all that he had done for him.

Lastooka entered the trailer and commenced a loud, bitter argument remonstrating Foster with coarse and vulgar language for filing the complaint. Foster shouted back his views on the matter. Lastooka reviewed what he had done for Foster and asked if he thought it was fair to cause the controversy between his sister and Shuler. He shouted that Foster could put himself in one of two classifications. He could be a company man as he had been, and the Company would take care of him the way it had with overtime and a brand new truck, or he could be a union radical and he would drive an old truck to jobsites far from home. Foster shouted back and at one point lunged at Lastooka with his fists clenched as if

[1] There apparently was no precedent for this question since the Union normally trained drivers before they took a job driving a truck.

[2] Driving the triaxle carries prestige among the truckdrivers as recognition of a job requiring skill but was compensated at the same rate as driving the other trucks operated by Foster—$9.43 per hour.

[3] The written complaint differed from Foster's oral complaint in which he claimed that he should have been allowed to drive the triaxle. Castagna and the union business agent met with Foster about the oral complaint and he admitted that he was unqualified to drive the triaxle. He now alleged that another driver, Louis Johnson, who was qualified to drive the triaxle, should have been recalled before Jimmy Green. If Johnson had been recalled first for the triaxle, then Foster would have had seniority over Green for other trucks. Ram did not recall Johnson before Green because Johnson had already refused to drive a highway truck. Furthermore, he was in poor health and had a heart attack shortly thereafter. He never filed a grievance about the matter.

he were going to strike him.[4] Lastooka said that because of all the controversy and for the benefit of the Company and Foster and his siter, it might be better for him to look for other employment.[5]

After they finally started to calm down, Lastooka warned Foster not to tell his sister what had occurred in the trailer. She had been in the hospital for treatment of ulcers and had been discharged only 4 days earlier. The doctor had told her not to get upset, and Lastooka did not want to worry her. Lastooka agreed to pay Foster an extra rain day but said that he would not let him drive the triaxle truck. He explained that he could not back down from what the dispatcher had decided. The two men talked calmly for a few minutes and parted with a handshake.[6]

The next day Foster called Shuler and told him he was taking Lastooka's advice and was looking for another job.[7] His sister did not come to work on that day and quit the next day.

II. DISCUSSION

A. *Threat of Bodily Harm*

Lastooka threatened that if Foster told his sister about the argument "he would have had Foster taken care of one way or the other."[8] The General Counsel argues that this amounted to a threat of bodily harm.

Lastooka admitted warning Foster not to tell his sister about the trailer argument. Because of his desire to protect Mlatnik's health and to retain her as a key employee, Lastooka undoubtedly stated this warning with strong emphasis. I do not believe, however, that Foster felt that his life or health were in danger because he had filed a complaint.[9] His union business agent, Thomas Lively, and Michael Shuler both credibly testified that shortly after the trailer argument they talked to Foster and he did not mention the threat of physical violence. In an interview with a state employment representative on June 10, 1980, less than a month after the argument, Foster did not mention that he had been threatened with bodily harm. And his sister testified as to her understanding, which she got from Foster, of the threat that had been made by Lastooka:

> . . . I knew that if Brad chose to stay with the company and be subjected, probably to humiliation, Mr. Lastooka was extremely hurt by that grievance, I think. He would probably humiliate Brad or [belittle] him or [demean] him among his peers and possibly put him into the . . . old equipment or whatever, he would have to serve as a visual reminder to his peers this is what can happen.

This testimony[10] shows that Foster felt he had been threatened with a loss of preferential treatment, not with physical harm.

B. *Threat of More Onerous and Rigorous Terms and Conditions of Employment*

Lastooka himself testified, at the hearing and the unemployment compensation hearing, that he told Foster that unless the written complaint was withdrawn he would no longer receive preferential treatment and would, in fact, be treated as a "union radical," driving the oldest truck Ram had at a jobsite farthest from home with no overtime work. This testimony shows an impermissible union animus.

While it may be true that someone will drive the old equipment and, in a company with jobsites in four States, some employees will journey far in order to work, the selection of which employees are to receive this treatment should not be a punishment for filing a complaint, regardless of how frivolous the grounds. Frivolous complaints may be disposed of summarily. They cannot be disposed of by punishment which might discourage legitimate protected activity. *Hankamer Ready Mix Concrete Company*, 234 NLRB 608, 611 (1978); *B & P Motor Express, Inc.*, 230 NLRB 653, 654 (1977). See, especially, *John M. Lastooka, trading as Ram Construction Company*, 228 NLRB 769, 771 (1977), enfd. 566 F.2d 1169 (3d Cir. 1977), where Lastooka violated the Act by transferring an employee from a triaxle truck to a tandem truck because of his union activity.

C. *Termination Because of Union Activities*

Ram argues that, even assuming Lastooka threatened bodily harm, the threat was not related to labor activities and therefore cannot be an unfair labor practice, since Lastooka threatened Foster because he might tell his

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[4] Lastooka did not mention this point in his testimony at Foster's unemployment compensation hearing, and he testified at the hearing that he did not remember what he had said that caused this response. Lastooka's testimony at the hearing on this point, however, was uncontested by Foster in his testimony as a rebuttal witness. 2 Wigmore, *Evidence* §§ 285, 289 (3d ed. 1970).

[5] Just before the argument in the trailer, Castagna told Lastooka that Foster had previously filed a grievance in an unrelated matter and that he had been paid for 2 days' work. Lastooka told Foster in the trailer that if he had known about the previous grievance he would have fired Foster.

[6] Foster did not file the written complaint with the Union (which turned it into a "grievance") until June, after he no longer worked for Ram. With the help of the union business agent, he settled the matter for 2 days' pay.

[7] Foster applied for unemployment compensation and a hearing was held. He was denied benefits on the ground that he had voluntarily quit his job.

[8] Foster's description of Lastooka's threat at the hearing differed from his description at the compensation hearing where he testified that Lastooka told him not tell his sister. At the hearing he testified that Lastooka told him not to tell *anyone* and especially his sister.

I found the testimony of both Foster and Lastooka to be self-serving and at times inconsistent with their testimony at the unemployment compensation hearing. I therefore rely on facts in their testimony which were not refuted or which were corroborated by Thomas Lively, the union business agent, Shuler, and Castagna, who appeared to be relatively credible witnesses.

[9] Foster's testimony on direct examination, while purporting to recount every vulgarity used by Lastooka during the argument in the trailer, omits a mention of his lunging at his employer, clearly a threat of bodily harm greater than shouted epithets and perhaps even justifying a strong response. Cf. *Associated Transfer Company of Texas, Inc.*, 173 NLRB 100, 103 (1968), where a threat by an employer's representative, made in response to a threat by an employee, was held not to be a violation.

[10] Rhonda Mlatnik was not generally a credible witness. After she left employment with Ram, she filed an unemployment compensation claim falsely alleging that she left because of lack of work. I believe that her loyalty to her brother would be more important to her than accurate testimony.

sister, not because he had filed a complaint. Even a threat so loosely connected to a labor practice, however, may violate the law.[11]

Ram further argues that a single employee acting alone does not engage in concerted activity within the meaning of Section 7 of the Act when he presses demands to which he deems himself entitled under the provisions of a collective-bargaining agreement.[12] Foster was not, however, acting as a single employee alone. He filed a written complaint based on an alleged violation of the union contract which, if true, also would have benefited another employee, Louis Johnson. Further, the Union later supported his grievance and eventually got him 2 days' pay for the matter involving Jimmy Green.

Ram also argues that the facts of this case show that Foster was not constructively discharged. As found above, I do not believe that Foster was unlawfully threatened with bodily harm. I have found, however, that Lastooka unlawfully threatened more onerous and rigorous terms and conditions of employment because Foster had filed a complaint.

There are two elements to a constructive discharge. The employer's conduct must have created working conditions so intolerable that an employee is forced to resign, and the employer must have acted to discourage membership in a labor organization. *N.L.R.B.* v. *Haberman Construction Company*, 618 F.2d 288, 296 (5th Cir. 1980). Since Foster did not work after the argument in the trailer, Lastooka's threat of changing Foster's working conditions was never carried out. A threat is not the equivalent of actual imposition of intolerable conditions of employment. *Central Casket Co.*, 225 NLRB 362 (1976).

I do not believe that Lastooka's conduct can reasonably be construed as amounting to a discharge.[13] Both Lively and Shuler credibly testified that Foster told them he quit and was going to school. He enrolled at Pittsburgh University night school on the GI bill, planning to become a lawyer and working as a desk clerk in a motel. It is clear to me that Bradley Foster took the opportunity to quit his job with Ram,[14] having planned months before to start school in June 1980. His construction work and hours were incompatible with night school and neither Lastooka's threat of discriminatory terms of employment nor his harsh language in the trailer amounted to a constructive discharge.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section (2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by unlawfully threatening its employee, Bradley E. Foster, with more onerous and rigorous terms and conditions of employment because he filed a grievance.

4. Except as found above, Respondent has not engaged in any other unfair labor practices as alleged.

THE REMEDY

Having found that Respondent has engaged in an unfair labor practice, I find it necessary that Respondent cease and desist therefrom and from any like or related conduct, and to post an appropriate notice, attached hereto as "Appendix."

Upon the foregoing findings of fact, conclusions of law, and entire record, I hereby issue—pursuant to Section 10(c) of the Act—the following:

ORDER[15]

The Respondent, Ram Construction Company, Inc., Canonsburg, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with more onerous and rigorous terms and conditions of employment because they have filed grievances.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which will effect the policy of the Act:

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[11] See *E. Mishan & Sons, Inc.*, 242 NLRB 1344 (1979), where the employer telephoned the employee's mother and told her that if anything happened to the employer, the employee would be hurt. The Board found a violation and a constructive discharge although the condition which would trigger the violence was harm to the employer, not the exercise of some protected union activity.

[12] This defense has been upheld in several circuit courts including *N.L.R.B.* v. *Northern Metal Company*, 440 F.2d 881 (3d Cir. 1971); *N.L.R.B.* v. *Bighorn Beverage*, 614 F.2d 1238 (9th Cir. 1980); *ARO, Inc.* v. *N.L.R.B.*, 596 F.2d 713 (6th Cir. 1979); *N.L.R.B.* v. *Dawson Cabinet Co., Inc.*, 566 F.2d 1079 (8th Cir. 1977); *N.L.R.B.* v. *Buddies Supermarkets, Inc.*, 481 F.2d 714 (5th Cir. 1973). The Board, however, has held that an employee who envokes the aid of a union to secure compliance with terms of the collective-bargaining contract is engaged in protected concerted activity. *G & M Underground Contracting Co.*, 239 NLRB 78, 80, fn. 5 (1978); *Perrenoud, Inc.*, 236 NLRB 804 (1978); *Marmon Transmotive, a Division of the Marmon Group, Inc.*, 219 NLRB 102, 108 (1975); *Enduro Metal Products Co., Inc.*, 160 NLRB 1411 (1966); and *Interboro Contractors, Inc.*, 157 NLRB 1295, 1301–02 (1966).

It is the duty of the administrative law judge to apply established Board precedent, which the Supreme Court has not reversed, despite contrary rulings by the circuit courts. *Intermountain Rural Electric Association*, 253 NLRB 1153, 1165, fn. 20 (1981); *Iowa Beef Packers, Inc.*, 144 NLRB 615 (1963); *Insurance Agents' International Union, AFL-CIO [The Prudential Insurance Company of America]*, 119 NLRB 768 (1957).

[13] Michael Shuler gave credible, unrefuted testimony that on May 14, 1980, he told Foster he could return to his job driving a truck at the airport jobsite, and at the unemployment hearing on July 2, 1980, Lastooka made it clear on the record that Foster's job was still available to him.

[14] While Lastooka did suggest during the argument in the trailer that Foster look for other work, the test for determining if the employer's statements constitute an unlawful discharge is whether the words would logically lead a prudent employee to believe his tenure has been terminated. *Ridgeway Trucking Company*, 243 NLRB 1048 (1979). While Lastooka used harsh words in the trailer argument, he was, in part, justifiably responding to, and goaded by, Foster's physical threat and intransigence. Considering that Lastooka's words were spoken in heat, shortly after Foster had lunged at him, and that the parties later cooled down and parted amicably, I do not believe a reasonable employee would consider that his job had been terminated.

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Post in its office and provide each of its employees with a copy of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in a conspicuous places, where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notice is not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[16] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."